The determination of that case depended on the consideration of that dealing and the action was accordingly held to be one removed from the jurisdiction of the Court by the terms of Section 3 of this Ordinance. It will be noted that the actions so removed are actions generally concerning any dealing in land which took place during the Japanese occupation, and not actions for the enforcement of such dealings or to recover debts or damages arising thereout nor even actions solely concerning such dealings. I respectfully agree with the views of the law laid down in that case, and would make this the clearer by reason of my later remarks.

In the case before me the premises are let on a monthly tenancy. Such a tenancy may be created by written or verbal agreement or might be deduced from the acts of the parties. The incidents of such a tenancy are inferred by law where they are not prescribed by express agreement. Such incidents include the requirements of a valid notice to quit and such requirements might be ascertained without reference to the agreement between the parties. But in order to ascertain whether the tenancy is a monthly tenancy and what are the relations between the parties it would be necessary to consider any express agreement made, and where the relationship is to be inferred from the acts of the parties, the most important acts of the parties to be considered would be those accompanying the tenant's entry into possession. It is therefore argued that here, and, presumably, over most or all monthly tenancies created during the Japanese occupation, this court has no jurisdiction to issue an order of ejectment. I was asked to give a written judgment, possibly because it was thought this question must be decided. There can be no doubt that it is a highly important point, and that this extension of the decision in *Yeo Peck Chie v. K. S. Gill & Co.* would affect many persons, and probably cause grave inconvenience by greatly increasing the number of persons and the amount of property involved in indefinite uncertainty as to their rights. Again it is not a point which can be decided on pure legal principles or in the light of the consequences resulting but must depend on the words of the Ordinance. It is a point which certainly calls for decision, but it is not necessary to the decision of this case.

It is true that the tenancy in this case commenced during the Japanese occupation, and that, in determining the nature of that tenancy, it might be necessary to consider a dealing in land during that period, but I am not required to determine any such matter. The plaintiff has alleged a monthly tenancy in section 3 of the plaint and this with the other facts necessary to the plaintiff's case are admitted by the defendant's pleadings. In determining the nature of the tenancy I have not to go beyond the pleadings.

The point referred to above does not therefore require to be determined and anything I might say would be pure obiter. It is unfortunate that in other cases tenants may be led to deny in their pleading the plain facts in order to take advantage of the point raised by the defence here, but such is the position. In effect then the facts essential to the plaintiff's case are admitted or not specifically denied and are before the Court. The point of law raised by the defendant fails and judgment must accordingly be given for the plaintiff for an order of ejectment of the defendant from No. 214, Brewster Road, Ipoh by 15.2.47 and for payment by the defendant to the plaintiff of mesne profits at the rate of $70/- p.m. from the termination of the tenancy to the date of ejectment and Costs.

Order Accordingly.

LEE LIP NGEE v. CROWN COUNSEL.

[App. Crim. Juris. (Evans, J.) October 28, 1946]

Food Control Proclamation No. 10 of 1945, Articles 4 and 14—Foodstuffs Movements (Restriction) Order 1945 as amended by Foodstuffs (Restriction) Amendment Order 1946—Prosecution need only prove the doing of the act prohibited—Mens rea unnecessary to constitute offence.

The appellant was convicted before the District Judge at Telok Anson for moving a controlled article, to wit, 186 bags of white rice, without the written authorization of the Assistant Food Controller, Lower Perak, contrary to Section 2 of the Foodstuffs Movement (Restriction) Amendment Order 1946. The appellant was the owner of the rice seized which at the time of seizure was in a boat off the coast of Perak. On his appeal against conviction it was argued **(inter alia)** that intent was an essential ingredient in moving and that there was no proof of any intent to move or of any **mens rea** on the part of the appellant.

Held, (1) that having regard to the provisions of Article 14 of the Food Control Proclamation, the only matter the respondent had to prove at the trial, was the doing of the act which was prohibited by the order and that the onus was on the appellant to show that he was entitled to do such act;

(2) that on the facts there was ample evidence on which the District Judge might find that the rice was being moved within the State of Perak by the appellant and that as the appellant had failed to discharge the onus put upon him by the Proclamation, the District Judge was right in convicting him.

MAGISTRATE'S APPEAL.

S. K. Das and *M. S. Mahendran* for the appellant.

T. A. V. Brodie for the respondent.

Evans, J. :—The appellant appeals against his conviction before the District Judge at Telok Anson for moving a controlled article to wit, 186 bags of white rice without the written authorization of the Assistant Food Controller, Lower Perak, contrary to Section 2 of G.N. 319 of 7.3.46. The appellant is the owner of the rice seized which at the time of seizure was in a boat off the coast of Perak. He appeals on many grounds.

In the first place he denies that the evidence before the District Judge proved that he was within the territorial waters of Perak. He states that there was no proof that he was moving the rice, that intent is an essential ingredient in moving and that there is no proof of any intent to move or of any mens rea on the part of the appellant. He further complains that the District Judge admitted evidence wrongfully and based his findings on facts not proved in evidence. The District Judge, so he says, took hearsay evidence of statements made by the crew as to the destination of the ship, and based his findings on facts as to the tides and as to Major Walshe's qualifications which were not proved in evidence. Such hearsay evidence should have been rejected by the Judge, but having admitted it he may have been influenced by it.

The Crown Counsel in reply contended that there was ample evidence on which the District Judge could find that the ship when seized was within territorial waters and that the rice was being moved. The evidence wrongfully admitted was he points out in every case given in reply to questions asked in cross-examination or in re-examination arising out of the cross-examination. As to the details regarding tides and the navigation of the Bagan Datoh Channel these were matters of which the District Judge could take judicial notice, and in any case relate only to the validity and force of the defendant's argument as to his position at the time of seizure based on the evidence as to the time taken in reaching Bagan Datoh.

In reply to questions from me as to when the offence was committed and what steps the appellant should have taken before approaching the coast of Perak, the Crown Counsel asked for an adjournment, but went on to claim that the legal prohibition was absolute, that all the prosecution had to prove was the moving within the jurisdiction and it was for the appellant to justify such moving. The relevant provisions were not cited in Court and I adjourned the case to consider how far they could bear this meaning, for such an interpretation would answer many of the grounds of appeal.

The appellant was presumably prosecuted under the provisions of the Foodstuffs Movement (Restriction) Order 1945 G.N. 85, as amended by the Foodstuffs Movement (Restriction) Amendment Order 1946 G.N. 319. These orders are made under the Food Control Proclamation No. 10 of 1945. This Proclamation empowers the Food Controller in Art. 4 (i) (iv) "to prohibit or control the movement of controlled articles between any specified areas". The original order adhered fairly closely to the enabling provision and prohibited the movement without permit of controlled articles from any of the areas specified. The amending order of 1946 varied this by substituting the prepositions "to and from, or within" for "from", and requiring in each case the authorization of the Assistant Food Controller of the area to which the article is to be moved. These orders purport to be made specifically under the provisions of Article 4 (i) (iv) above and "all other powers him enabling". The provision immediately before Article 4 (i) (iv) that is Article 4 (i) (iii) empowers the prohibition of the import or export of any controlled article, and this power would clearly cover the prohibition and the facts in this case.

Learned Counsel for the appellant referred at one point to Major Walshe's being the only witness as to the position of the ship when seized. In point of fact every witness for the prosecution and defence gave some evidence on this point. Major Walshe gave evidence of taking bearings and of reckoning the position as 1¾ miles off shore. The two other prosecution witnesses do not seem to have relied on his observations but gave personal estimates of the position as 2 miles North west of Bagan Sungei Burong and one mile off shore. The appellant stated that the ship was 10 miles off shore and out of sight of the land. His co-defendant below, the Master of the ship, gives his distance as 6½ miles south west of Pulau Puroh, itself some distance from land. Major Walshe was the only man who took any observations. The District Judge referred to him as an Artillery Officer of long standing. As he is a Major of Artillery and second in command of his Regiment, and as the District Judge saw this witness it seems to me quite frivolous to take exception to such a description. His evidence was obviously better than that of all others who made no observations, but simply gave

evidence of estimates. The defendant's estimates were wildly at variance from the other witnesses, and the appellant's suggestion that they were out of sight of land is contradicted by every witness who estimated his distance therefrom. The District Judge was perfectly justified, and in my opinion rightly decided, that the ship when taken was within territorial waters. It is also clear that in sailing the vessel within those waters they were moving the rice and intending to move it. Whether that movement was with *mens rea* is immaterial in view of the wording of the legislation. I would, however, point out that this is not a purely penal provision either giving a right to sue for a penalty or, as criminal defining an offence and prescribing the punishment. It is a provision of legislation designed to ensure an equitable distribution of food, and there is not, prima facie, scope for consideration of *mens rea* or criminal intent.

There was ample evidence on which the District Judge might find the rice was being moved within the State of Perak, and being moved by the appellant who had control of the ship. The Orders under which the appellant was prosecuted were made under the provisions of the Food Control Proclamation. Article 14 thereof provides : —

> In any prosecution under this Proclamation upon a charge of doing any act which is unlawful unless the person doing such act is entitled to do so by reason of his being the holder of a licence, permit or written permission, consent, authorisation or exemption entitling him to do such act, it shall be sufficient for the prosecution to allege and prove his doing of such act and the onus shall then be upon the accused to show that he was entitled to do such act.

The Article goes beyond even the claim made by the Crown Counsel in argument. His plea that the evidence wrongfully admitted was in cross-examination appeared to be thin; in view of this provision it is perfectly justified. Appellant in cross-examination of prosecution witnesses asked what the crew had said as to the boat's destination. Their replies did not greatly assist appellant and the crew's statements were hearsay, but they had no bearing whatever on the matters the respondent had to prove.

The District Judge's reference to the tides and to the navigation of the Bagan Datoh channel referred simply to the defendant's contention that the position of the ship could be ascertained by the time it took to reach Bagan Datoh. Section 57 (i) of the Evidence Enactment does not contain an exhaustive list of matters subject to judicial notice, and sub-section (2) thereof gives the Court a wide power of judicially informing itself, which was in practice been widely used. I feel no doubt that a port's tide tables worked out and published for general information might quite properly be consulted. So too the Judge might be expected to have a general knowledge of the navigation of a port in his area just as he would be expected to have a general knowledge of the means of communication. The District Judge referred however to these matters to indicate that the data by which the appellant strove to reckon his position was totally inadequate. It is obviously quite impossible to discover his position by dead reckoning without a knowledge of the courses steered and the time on each course and the speed relative to the ground. Not one of these is known. Appellant could not even say how far Bagan Datoh was up river. In any case the method is less accurate than Major Walshe's whose evidence was clearly far the best on this point. It was further suggested that Major Walshe's compass was not accurate. The same might be said of the charts, watches and log, if any. It is easy after a case is over to think of questions which might have been asked in cross-examination by the defence, but were not. It is a complete waste of time to suggest such matters on appeal as matters of doubt or of further investigation, unless, of course, fresh evidence not obtainable below has come to light. Appellant could have called for the compass or suggested its being tested but in fact did not. In this connection I should perhaps point out that there is a misprint in the grounds of judgment para. 10 where what is given in evidence as 1355 is inserted as 1315. This moreover was not the time of starting for Bagan Datoh, but of the boarding after which it may be the boats lay to for some time. Appellant himself gives 2½—3 hours as the period of the voyage home and not 3¾ hours as quite inaccurately stated by Counsel in Court.

It seems to me therefore that the appeal fails. It has not been shown that the District Judge misapplied the law, or acted on unproved assumptions of his own. There was ample evidence of the facts the prosecution had to prove and the appellant, who does not seem to have impressed the Judge as a truthful person, failed to discharge the onus put upon him by Proclamation 10. The sentence does not appear to be excessive and the appeal is therefore dismissed.

Appeal Dismissed.